

WES MOORE
GOVERNOR

ARUNA MILLER
LT. GOVERNOR



SAREESH RAWAT, CHAIR
SAMUEL G. ENCARNACION
DEBRA LYNN GARDNER
QUINTON M. HERBERT
NIVEK M. JOHNSON

STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-106

September 26, 2024

Maryland Office of the Attorney General, Custodian/Complainant
SM et al., Applicants

The Maryland Office of the Attorney General (“OAG”) alleges that certain Public Information Act (“PIA”) requests it received between September 2023 and April 2024 are frivolous, vexatious, and in bad faith under § 4-1A-04(b).¹ As explained below, we agree and order that the OAG need not respond to these requests, or any substantially similar subsequent or future requests as detailed in our conclusion.

Background

We take the following facts from the submissions, which include an exhibit submitted by the OAG containing PIA requests and other correspondence received and sent by the OAG from mid-September 2023 through the end of April 2024.

On September 16, 2023, the OAG received a PIA request from a person identified as “Brie.” The request sought records of court judgments and other information related to court cases involving an Assistant State’s Attorney (“ASA”) in the Office of the State’s Attorney for Baltimore City (“BCSAO”) in her personal, not professional, capacity. The ASA happened to be one of the prosecutors handling a number of cases related to an individual named James Alford that were then pending in the District Court of Maryland for Baltimore City. The OAG timely responded that it had no responsive records and suggested that the requester contact the BCSAO and the courts.² As far as we know, the OAG had no further contact with “Brie.”

A couple of weeks later, in early October, the OAG received a PIA request from a person identified as “CB.” That request, sent on October 5, 2023, at 5:28 p.m., sought records related to a criminal case in which James Alford was the alleged victim, including records and information of the BCSAO “obstructing” the case and “nolle prosequing the case

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

² “Brie” sent the same PIA request to the BCSAO. See PIACB 24-29, at 8 n.9 (Mar. 29, 2024). As discussed in more detail below, in PIACB 24-29 we found that this PIA request was part of a pattern of requests that were vexatious and in bad faith. *Id.* at 22-25.

prior to the trial date without the victim's knowledge and in violation of victims rights laws." Two days later, on October 7, 2023, at 9:25 a.m., the OAG received a PIA request from "SM" seeking numerous records related to James Alford's district court matters and accusing certain ASAs of misconduct and unethical behavior.³ That same day, but at 12:47 p.m., the OAG also received a PIA request from a person identified as "AR." Like the request from "SM," this request asked for records related to James Alford's matters and contained accusations of misconduct—albeit by different ASAs.⁴ The next day, on October 8, 2024, at 11:35 a.m., Rachel Garcia sent a PIA request for copies of a PIA response letter from the BCSAO and the records disclosed in that response. As with the previous two PIA requests, the request accused an ASA—specifically the BCSAO's PIA officer—of misconduct. The OAG responded to all four of these requests on October 20, 2023, indicating that it had no responsive records.

Before the OAG's October 20 response letter issued, it received a fifth PIA request for records related to James Alford and his district court matters. That request, sent by "JD" on October 14, 2023, at 5:56 p.m., asked for information about one of the ASAs referenced in a previous request "making an illegal arrangement" to "deny another person's ability to file a statement of charges without her permission." The OAG responded on October 26, 2023, stating that it had no responsive records.

During the months of November and December, the OAG received ten more PIA requests sent from different email accounts under different names for records that related back to James Alford and his district court matters in some way, including records concerning the PIA requests sent to the BCSAO for those records:

On November 3, 2023, at 9:50 p.m., Lindsey Larkin asked for records related to a mediation in the Office of the Public Access Ombudsman and accused the Ombudsman of attempting to "force a single PIA applicant into a fraudulent arrangement at the request of the [BCSAO], so they could make

³ For example, that the "Team Captain" attempted to "coerce and force James Alford to sign affidavits of non-prosecution that are in violation of public policy," that another ASA attempted to "weaponize that she had been referred to the Maryland AGC for professional attorney misconduct against James Alford," and that the ASA "withheld Brady evidence and impeachment material from Mr. James Alford."

⁴ For example, that the ASAs "releas[ed] confidential police reports and information for ongoing criminal investigations in violation of MPIA disclosure laws," that they "obstruct[ed] and imped[ed] the criminal investigation and prosecution of case [sic] Maryland case 4B02470094," and that one of the ASAs failed to "process charging documents within the 15 day timeframe" and failed to "review evidence . . . contact victims [and] . . . afford victims their right to be informed or confer with the prosecutor assigned to the case."

it appear as if the single PIA applicant was somehow responsible for 20+ other people's requests."⁵

On November 12, 2023, Alejo Gomez asked for "a copy of all records created, provided or received" by the Assistant Attorney General ("AAG") representing the BCSAO "during the course of her governmental functions during the period of October 1 to November 2023."

On December 8, 2023, at 1:53 a.m., Steven Brown asked for "all emails, documents, records, correspondences, voicemails, text messages, phone records, and record of any kind sent, received, or produced by" an OAG employee "in connection to any matter involving [the BCSAO's PIA officer]."

On December 8, 2023, at 2:49 a.m., "AR" asked for the BCSAO's PIA officer's "prohibited dissemination, distribution, and copying" of "communications pertaining to the Office of the State Prosecutor's criminal investigation into the activities of [the BCSAO PIA officer's] criminal conduct."

On December 9, 2023, at 7:52 a.m., John Davis asked for, among other things, "a complete copy of every document, record, email" related to PIACB 24-27⁶ and PIACB 24-29, and "a copy of any email, record, or exchange from Lisa Kershner or the PIA Ombudsman office in which I was informed of these two matters."

On December 9, 2023, at 8:01 a.m., John Davis asked for, among other things, "a copy of the correspondence, email, or whatever document or records you have in which you informed me of the matter in PIACB 24-29."

On December 10, 2023, at 10:28 a.m., Hannah Barnes asked for "all documents and records that demonstrate mediation was attempted with [her]" and that "a final determination was issued that included [her] PIA request in relation to PIACB 24-29."

⁵ The matter to which this request referred eventually formed the basis for the BCSAO's complaint in PIACB 24-29 (Mar. 29, 2024), noted *supra*, note 2, in which we found that PIA requests sent to the BCSAO from numerous different email accounts for records related to James Alford and his district court matters were vexatious and in bad faith.

⁶ PIACB 24-27 was a complaint by James Alford against the BCSAO. We found that the BCSAO did not violate the PIA as alleged by Mr. Alford. See PIACB 24-27 (Mar. 6, 2024).

On December 10, 2023, 3:19 p.m., William Hernandez asked for “all documents, records and emails” of the Ombudsman and our Board “refusing to acknowledge, respond to, or clarify any of [his] inquiries about mediation,” as well as records related to a “PIA matter that [he] did not consent to, that [he] was not informed of, and that clearly violated the standards of mediator conduct.” The request explained that “[t]his would almost certainly be any document related to PIACB 24-29.”

On December 10, 2023, at 6:03 p.m., Lionel Rodriguez asked for “all documents, records, and exchanges” related to “several individuals in the Ombudsman office” who had been “using threats and coercion to force a PIA applicant to ‘mediate’ a matter at the behest of the [BCSAO].”

On December 28, 2023, at 4:34 p.m., Lionel Rodriguez asked for “the documents and records that allude to the fact that the Ombudsman office used threats and coercion at the behests of the BCSAO.”

For all but the PIA requests sent by Alejo Gomez and “AR,” and the second PIA request sent by Lionel Rodriguez, the OAG responded that it was not the custodian of the records. The OAG produced records in response to Alejo Gomez’s and “AR”’s requests, as well as for Lionel Rodriguez’s second request.

The PIA requests that the OAG received in October, November, and December were very similar to—and in some instances, the same as—the PIA requests identified in the BCSAO’s complaint in PIACB 24-29. With two exceptions—Alejo Gomez and Steven Brown—the requests were also sent from email accounts identified in PIACB 24-29. The PIA requests tended to focus on the BCSAO and, to the extent that many of them contained explicit or implicit accusations of misconduct, those accusations were largely trained upon BCSAO employees and the Public Access Ombudsman, and not the OAG. As we indicated in PIACB 24-29, those accusations were not supported with any evidence. *See* PIACB 24-29, at 24 (Mar. 29, 2024).

After the start of the new year, however, there was a marked shift as the PIA requests began to focus on the Assistant Attorney General who served as counsel to the BCSAO and who represented the BCSAO for purposes of complaints against it made to our Board.⁷ Like the earlier requests for records concerning the ASAs, many of these newer PIA requests accused the AAG of unethical and corrupt behavior. For example:

“[A]ll emails, correspondences, and communications produced by” the AAG in which she “makes disparaging comments about any rape or domestic violence victim.” (“SM,” Mar. 16, 2024, at 12:49 a.m.).

⁷ We count at least twenty-two such complaints filed against the BCSAO in fiscal year 2024.

“[A]ll documents and records” of the AAG “falsifying documents and records, actual or alleged for any matter from the period of 2023 to 2024.” (Eric Rodriguez, Mar. 21, 2024).

“[A]ll documents, records, emails, exhibits, and correspondence” of the AAG “utilizing falsified exhibits in the course of litigation and PIA matters.” (Adam Barry, Mar. 23, 2024, at 12:35 a.m.).

“[A]ll falsified exhibits and information the BCSAO used in the course of PIA litigation to include those manufactured by” the AAG. (Thuy Nguyen, Apr. 7, 2024, at 11:05 p.m.).

“[A]ll documents and records” of the AAG “disseminating documents and records related to an active rape case” and “requesting/demanding PIA applicants review exhibits containing hyperlinks leading to documents and records for an active rape case.” (William Hernandez, Apr. 20, 2024, at 9:53 p.m.).

“[E]very document and record” related to the AAG “distributing, communicating documents related to an active rape case, or requesting/demanding PIA applicants review/ respond to documents with hyperlinks that lead to a share drive with documents related to an active rape case.” (Rachel Garcia, Apr. 27, 2024, at 11:29 a.m.).

After the new year, the OAG also received a handful of PIA requests that appeared more neutral in tone, often seeking a broad range of records related to the AAG who was counsel to the BCSAO. For instance:

“[A]ll emails, phone records, communications, or documents of any kind on any account controlled by [the AAG] . . . related to any PIACB matter directly or indirectly related to the BCSAO.” (“Fialon,” Apr. 6, 2024, at 2:56 p.m.).

“[A]ll emails, phone records, correspondences, and documents of any other kind [the AAG] has created, sent, or received in connection to any PIA matter involving the BCSAO.” (“Tod,” Apr. 10, 2024, at 12:13 a.m.).

“[A]ll emails, phone records, and correspondences of any kind between [the AAG] and any member of the Public Access Unit, BCSAO, or AACSAO from the period of August 2023 until April 2024.” (“Bianca,” Apr. 15, 2024, at 12:17 a.m.).

“[A]ll correspondence, emails, and phone records” the AAG had “received, produced, or communicated in matters directly or indirectly related to Louis Leibowitz and/or Arnold Abraham.”⁸ (Alejo Gomez, Apr. 26, 2024, at 6:07 p.m.).

The OAG responded to some of these newer requests for records related to the AAG by advising that it did not have responsive records. When the requests continued, however, the OAG began to refer them to the Ombudsman on grounds that they were frivolous, vexatious, and in bad faith.

On May 29, 2024, the OAG filed a complaint alleging that “a pattern of at least 20 requests and communications” are frivolous, vexatious, and/or in bad faith under § 4-1A-04(b).⁹ The complaint details the facts underlying our decision in PIACB 24-29 and the conclusions we drew from them, and argues that “this present matter is merely the continuation of the same pattern of conduct by the same requester(s), but only now with a different custodian.” The OAG notes that, starting in September 2023 and “during the same period that the BCSAO was being inundated with requests from Mr. Alford,” the OAG received more than twenty PIA requests relating to the Alford matter. The OAG stresses that, as in PIACB 24-29, “these requests relied on false premises of fraud or misconduct, and sought documents that patently do not exist.” While the OAG acknowledges that none of the requests were sent under James Alford’s name, the OAG points out that many of them were sent from the same email accounts identified in the BCSAO’s complaint.

The OAG also emphasizes that, like the BCSAO in PIACB 24-29, the OAG has made good-faith efforts to respond to many of the PIA requests described above. The OAG states that it provided responsive records when they existed and advised when responsive

⁸ Louis Leibowitz was the person against whom James Alford sought charges in the District Court of Maryland for Baltimore City. See PIACB 24-29, at 1 (Mar. 29, 2024).

⁹ The PIA requires a complainant to attempt to resolve a dispute through the Public Access Ombudsman before filing a complaint with our Board. See § 4-1A-05(a). The OAG provides a document titled “Statement of Ombudsman Conflict Precluding Mediation” which indicates that the OAG requested mediation between April 12 and April 29, 2024. See COMAR 14.37.02.07C(3) (providing that, “[i]f the Ombudsman is unable to proceed in a neutral, impartial, and independent manner,” then the Ombudsman must withdraw from the mediation and issue a final determination “stating that the dispute was not resolved through the Ombudsman due to conflict”). The response we received from William Hernandez suggests that this statement was “falsified” and is “retaliatory.” We observe that the statement submitted by the OAG is identical in form to the statements of conflict submitted by Mr. Hernandez and many others identified in the OAG’s complaint for their own complaints over the last six months, *see supra*, note 7. The complainant has offered no explanation for why the statement would be valid for those complaints, but not the OAG’s.

records did not exist—which, the OAG explains, was often the case given the nature of the requests. The OAG argues that our resolution of this complaint “should follow directly from the outcome” in PIACB 24-29. The OAG contends that it too “has been subjected to ‘recurring, repetitive, and unrelenting’ requests by many of the same email addresses that are similarly designed to harass, seek documents that have already been provided, or seek documents that self-evidently do not exist.” The OAG asks that we issue an order relieving the OAG of the obligation to respond to any of the Alford-related PIA requests identified in its complaint¹⁰ or to any “subsequent or future requests related to (1) James Alford, Louis Leibowitz, and the matters between them heard in the District Court for Maryland for Baltimore City from early 2022 through the end of 2023, or (2) any communications between employees of the OAG and other related to these same matters (or PIA requests concerning those matters).”

We sent the OAG’s complaint to the email accounts identified in the Statement of Ombudsman Conflict Precluding Mediation and requested a response. See § 4-1A-06(a). We received written responses from Rachel Garcia and William Hernandez. Ms. Garcia contends that the complaint is untimely because it was filed more than thirty days after “the issuance of a final determination.” Ms. Garcia further notes that “[a] day = 24 hours” and that “30 x 24 = 720 hours,” thus presumably arguing that the OAG’s complaint had to be filed within 720 hours of receipt of the Ombudsman’s statement for it to be timely.¹¹

William Hernandez first indicates that he is responding “on behalf of all the victims to this fraudulent complaint.” As noted *supra*, note 9, he contends that “the alleged ‘Final Determination’ was falsified, is retaliatory, [and] does not meet the basic statutory requirements.” He contends that “[t]he dates were clearly fabricated” and that if they “were

¹⁰ Of all the PIA requests the OAG received, we count six that received no response at all. In some cases in which the OAG responded that it had no responsive records, the requester indicated disbelief or responded with additional accusations of misconduct that the requester believed proved the records’ existence. For example, after the OAG advised Adam Barry that it had no responsive records and explained that the AAG had not falsified any exhibits, Mr. Barry responded that the AAG “falsified exhibits in relation to Ms. Briana Moore, and she retroactively modified exhibits from their original as it pertains to redactions. Please search again. Thank you.” (Mar. 26, 2024, 6:47 p.m.). It appears that the OAG did not respond to this email or others like it.

¹¹ We may dispose of this argument rather quickly. The Ombudsman’s statement of conflict issued on Monday, April 29, 2024, at 3:08 p.m. The OAG filed its complaint on Wednesday, May 29, 2024, at 5:57 p.m.—i.e., within thirty days after the statement was sent. See § 4-1A-05(b)(5) (requiring a complaint to be filed “within 30 calendar days after the complainant receives the final determination of the Public Access Ombudsman”). The statute does not say “within 720 hours.” *Cf.* Md. Rule 20-101(b) (providing that a “‘business day’ begins at 12:00.00 a.m. and ends at 11:59.59 p.m.”). The OAG’s complaint was timely filed.

true, the PIA Ombudsman would have sent each PIA applicant a mediation request at the onset of mediation as required by law.”¹²

Mr. Hernandez also asserts that “[a]ccording to several police reports, there are three named criminal suspects in relation to a series of events that include: revenge porn and criminal online harassment via electronic means.”¹³ According to Mr. Hernandez, these “three named criminal suspects” include the BCSAO’s former PIA officer (who was a target of many accusations in the PIA requests we found vexatious and in bad faith in PIACB 24-29), the Assistant Attorney General representing the BCSAO, and our own Board counsel. Mr. Hernandez accuses these three individuals of “disseminating documents related to an active rape case,” and asserts that “[f]orensic analysis of PIA applicant Adam Barry’s email account and personal devices reveal[s] that documents and records related to an active rape case were disseminated to him in February 2024.”¹⁴ This, Mr. Hernandez alleges, led Mr. Barry to file PIA requests both to our Board and to the OAG.¹⁵ Mr. Hernandez asserts that “[w]hen he discovered the OAG was preparing to file

¹² We note that there is no legal “requirement” that the Ombudsman send the parties to a mediation a “mediation request” or any other specific type of communication. See § 4-1B-04(a) (generally requiring the Ombudsman to make “reasonable attempts” to resolve PIA-related disputes, but providing no specific means of doing so). While, practically speaking, it certainly makes sense that the Ombudsman would contact the party who did not request mediation to obtain their position on whether to participate in mediation, in these unique circumstances, where a pre-existing conflict precludes mediation through the Ombudsman at all, *see supra*, note 9, it may well be that the Ombudsman did not do so.

¹³ Mr. Hernandez provides no police reports.

¹⁴ Mr. Hernandez provides no “forensic analysis.”

¹⁵ We denied Mr. Barry’s PIA request in part. Mr. Barry then filed a complaint with our Board and we issued a decision stating that we were unable to resolve that complaint. See PIACB 24-84 (Apr. 26, 2024). As noted in that decision, neither our Board, nor our staff “disseminated documents related to an active rape case.” See *id.* at 2 n.4. Because Mr. Hernandez places such emphasis on these accusations, we provide a bit more detail, based in part on the information we received as we resolved PIACB 24-29. We understand that, at some point in 2022 or 2023, Mr. Alford told police that he was sexually assaulted by Louis Leibowitz. Thereafter, the BCSAO started to receive numerous PIA requests for records related to Mr. Alford and Mr. Leibowitz. Some of those requests asked for police reports. When the BCSAO produced records in response to a PIA request, it did so via a letter that included a link to a Sharepoint account associated with the BCSAO PIA officer’s personal work account. At least one letter sent in response to an Alford-related request contained a link to responsive records that included police reports, including Mr. Alford’s report of sexual assault. When the BCSAO submitted its complaint for PIACB 24-29, in December 2023, it included an exhibit of all the letters it sent in response to Alford-related PIA requests. Later, at the end of February 2024, our Board determined that the BCSAO’s complaint should be sent to all accounts identified therein for a response. Thus, we sent the complaint—and the exhibits—to those accounts, including the account associated with Adam Barry. The hyperlinks in the BCSAO’s response letters were no longer active when we

a retaliatory complaint against him, [Adam Barry] blamed himself, and attempted to take his life.”

Addressing the PIA requests sent to the OAG, Mr. Hernandez asserts that “[t]he theme of these PIA requests are in relation to OAG and BCSAO employees and their distribution of rape documents and weaponizing public records requests,” and that this is “a matter that merits investigation without resistance or fear of retaliation.” Mr. Hernandez seems to suggest that, should we grant relief to the OAG, we would be acting as a “‘Burn Book’ for the Government to harass and write retaliatory narratives against private citizens,” rather than “acting to enable members of the public to gain access into governmental affairs via public records.”

Analysis

The PIA authorizes us to review and resolve complaints that allege certain violations of its provisions. See § 4-1A-04. In 2021, the Legislature amended § 4-1A-04 so that custodians may file complaints that “an applicant’s request or pattern of requests is frivolous, vexatious, or in bad faith.” § 4-1A-04(b); see 2021 Md. Laws, ch. 658. Though the statute does not specifically define the terms “frivolous,” “vexatious,” or “bad faith,” it directs us to consider “the totality of the circumstances including the number and scope of the applicant’s past requests and the custodian’s response to past requests and efforts to cooperate with the applicant.” § 4-1A-04(b)(3). If we find a PIA request or a pattern of PIA requests frivolous, vexatious, or made in bad faith, we must “issue an order authorizing the custodian to . . . ignore the request that is the subject of the custodian’s complaint” or “respond to a less burdensome version of the request within a reasonable time frame, as determined by the Board.” § 4-1A-04(b)(3). In addition, we may order that the custodian may “[i]gnore any future requests that are substantially the same as the request that is the subject of the custodian’s complaint.” COMAR 14.02.07.04D(2).

As mentioned above, we have previously considered only one complaint from a custodian under § 4-1A-04(b). See PIACB 24-29 (Mar. 29, 2024). That complaint, from the BCSAO, alleged that a pattern of more than sixty PIA requests sent from numerous email accounts seeking records related to James Alford and his district court matters were frivolous, vexatious, and in bad faith. After considering an extensive record, which included copies of the PIA requests that the BCSAO received, the responses it issued, and other communications sent by the requesters, we found those requests vexatious and in bad

did this. We know this because, on January 18, 2024, we received an email from Rachel Garcia stating that the BCSAO had “evidently taken down the links.” Further, the BCSAO’s PIA officer left the BCSAO for other employment at the end of January. Presumably soon thereafter the BCSAO deactivated his email account and thus also the Sharepoint links associated with that account. Thus, the bulk of Mr. Hernandez’s reply is premised on allegations that are simply not true. His choice to press them here seriously undermines his credibility, in our view.

faith. We ordered that “the BCSAO need not respond to any of the Alford-related requests identified in its complaint, nor need it respond to any subsequent or future requests for records related to James Alford, Louis Leibowitz, and the matters between them heard in the District Court of Maryland for Baltimore City from early 2022 through the end of 2023.”¹⁶ PIACB 24-29, at 25 (Mar. 29, 2024).

In our decision for PIACB 24-29, we determined that a custodian bears the burden of demonstrating, by a preponderance of the evidence, that a PIA request (or pattern of PIA requests) is frivolous, vexatious, or in bad faith. *See id.* at 14 & n.18. Thus, to obtain relief here, the OAG must prove that it “is more likely so than not so,” *Romero v. Perez*, 463 Md. 182, 197 n.20 (2019), that “based on the totality of the circumstances” the PIA requests identified in its complaint are “frivolous, vexatious, or in bad faith,” § 4-1A-04(b). For guidance in applying those terms, we turned to dictionary definitions and Maryland cases that have interpreted them in other legal contexts.

Section 4-1A-04(b) refers to “*an applicant’s* request or pattern of requests.”¹⁷ § 4-1A-04(b)(1) (emphasis added). In PIACB 24-29 we found that the PIA requests that the BCSAO received could be attributed to James Alford, either because Mr. Alford was operating the email accounts himself or because he was working with other requesters to encourage and coordinate the PIA requests. Our conclusion was based on the timing of the PIA requests, the fact that all of the requests sought very specific and somewhat obscure records, and that many contained the same legal-like phrases and, in some cases, “mirror-like text.” PIACB 24-29, at 15-19 (Mar. 29, 2024). We found that these circumstances—i.e., where one requester is either sending multiple, repetitive requests under the guise of different names or coordinating and encouraging multiple, repetitive requests by other actual people—imbued the PIA requests with a certain level of deception, which was indicative of bad faith. *Id.* at 24-25.

Nothing before us here causes us to question our determination that there is, at the very least, coordination between the requesters seeking Alford-related records, or suggests that it was incorrect. Instead, the submissions tend to convince us that our conclusions in PIACB 24-29 were sound, and that the coordination is continuing in the PIA requests to the OAG. First there is the fact that fifteen of the nineteen email accounts identified in the OAG’s complaint were also identified in the BCSAO’s complaint as having sent Alford-related PIA requests. And, early on, many of the PIA requests the OAG received were

¹⁶ Our decision was appealed to the Circuit Court for Baltimore City. *See In the Matter of William Hernandez*, No. C-24-CV-24-000368 (Cir. Ct. Balt. City). On September 4, 2024, the Circuit Court affirmed our decision after a hearing. Mr. Hernandez has appealed the Circuit Court’s ruling to the Appellate Court of Maryland.

¹⁷ We note that § 1-202 of the General Provisions Article provides, regarding interpretation of Maryland Code provisions, “[t]he singular includes the plural and the plural includes the singular.”

substantially similar to the PIA requests to the BCSAO—requests we found vexatious and in bad faith. Second, there are similarities in the tone and content of PIA requests the OAG received. For instance, many of the PIA requests concerning the AAG for the BCSAO accused that AAG of wrongdoing without any support for the accusations. Those requests also broadly sought the same types of records, e.g., all “emails” “correspondences” “phone records,” and “documents.” Moreover, these requests all have the same roots. That is, dissatisfaction with how the BCSAO handled James Alford’s district court matters—which then became dissatisfaction with how the BCSAO handled the PIA requests about those matters, and then dissatisfaction with how the Public Access Ombudsman handled the BCSAO’s request for mediation regarding those PIA requests, and finally dissatisfaction with our Board’s decisions.

We also find evidence of coordination in the responses to this complaint. William Hernandez indicates that he is responding “on behalf of all the victims to this fraudulent complaint.” That response was sent by email. Though not identified in the OAG’s complaint, Mr. Hernandez sent his response to Matthew Miller, in addition to sending it to our Board and the OAG.¹⁸ On July 17, 2024, at 11:07 a.m., we contacted the other email addresses identified in the Ombudsman’s statement to remind them of the deadline for submitting a response to the OAG’s complaint. We did not send this email to Matthew Miller. That same day, at 2:03 p.m., Matthew Miller emailed our Board that “[n]o other responses will be provided.” These actions, coupled with the continued similarities in requesters and requests, convince us that the PIA requests identified in the OAG’s complaint may be attributed to “an applicant.” § 4-1A-04(b)(1). While the PIA requests may not necessarily be the result of one person masquerading as many others (although we do not rule that possibility out), in our view they strongly suggest a group working in concert together.

We next turn to the OAG’s allegation that these PIA requests are frivolous, vexatious, and in bad faith. We note first, as we did in PIACB 24-29, at 22 (Mar. 29, 2024), that the statute is worded in the disjunctive—we must decide whether a request or pattern of requests is “frivolous, vexatious, *or* in bad faith.” § 4-1A-04(b)(1) (emphasis added). Thus, if the OAG can prove, by a preponderance of the evidence, that these requests are frivolous *or* vexatious *or* in bad faith, then the OAG is entitled to relief under the statute. Proof of one of those things is enough.

As noted above, the PIA does not define “frivolous,” “vexatious,” or “bad faith.” In PIACB 24-29, we looked to several different sources to find their meaning for purposes of § 4-1A-04(b), including dictionaries, Maryland cases interpreting the terms in other legal contexts, and a decision from Connecticut’s Freedom of Information Commission

¹⁸ Matthew Miller was alleged to have sent frivolous, vexatious, and bad faith PIA requests in the BCSAO’s complaint. See PIACB 24-29, at 5 n.5, 16 nn.21 & 22 (Mar. 29, 2024).

(“FOIC”) that involved a similar vexatious request provision.¹⁹ See PIACB 24-29, at 19-22 (Mar. 29, 2024). From those sources, we determined that a PIA request may be “frivolous” when “it has no basis in law and lacks in legal merit or foundation.” *Id.* at 22. We found that requests may be vexatious when “they are intended to harass or annoy a custodian, and when they are ‘recurring, repetitive and unrelenting,’ and contain abusive, disparaging, or profane language.” *Id.* (internal citation omitted). Finally, we said that PIA requests may be made in “bad faith” when “they ‘make a mockery of public access’ by, for example, ‘pretending to be someone else when making a request,’” or when they “do not seem to be truly concerned with obtaining public records,” but rather “more intended to harass . . . and to serve as a vehicle for invectives and other unsupported accusations of serious misconduct.” *Id.* at 24 (internal citation omitted).

The OAG contends that it has been subject to “‘recurring, repetitive, and unrelenting’ requests” that are “designed to harass, seek documents that have already been provided, or seek documents that self-evidently do not exist.” The OAG points out that many of the requests focus on the AAG who represents the BCSAO, and we note that most of those requests also contain unfounded accusations of unethical, corrupt, and, in some cases, criminal behavior. After review of the record, including the responses from Ms. Garcia and Mr. Hernandez, and based on “the totality of circumstances,” § 4-1A-04(b)(3), we agree that the PIA requests identified in the OAG’s complaint are vexatious and in bad faith.

We start with the vexatious nature of these requests. Between mid-September 2023 and the end of April 2024, the OAG received more than thirty PIA requests for records about the BCSAO and the way in which it handled various matters related to James Alford, from the criminal cases in district court to complaints to our Board about PIA requests for records concerning Mr. Alford. Based on the language of many of those requests, it is clear that the OAG was not the custodian of records—and the OAG appropriately responded to such effect, under § 4-202(c). In other instances, the OAG advised, as provided in § 4-202(d), that no responsive records existed. For those few instances in which the OAG did have responsive records, the OAG provided them, albeit some in redacted form. The record also shows that the OAG answered questions from some of the requesters at various points. In other words, the OAG made “efforts to cooperate” with them. § 4-1A-04(b)(3).

But, the OAG’s responses did not satisfy the requesters, and they continued to send PIA requests—many for the same records already requested by a different requester—and other communications, often accusing OAG employees of wrongdoing. While the PIA requests to the OAG may not have contained the same level of profane and abusive language as was present in many of the requests to the BCSAO, *see, e.g.*, PIACB 24-29, at 23 (Mar. 29, 2024), the repeated unfounded accusations and disparaging remarks about the

¹⁹ See *Town of East Lyme v. Godbout*, FOIC PRVR #1 (Feb. 26, 2020), https://portal.ct.gov/-/media/foi/finaldecisions/2020/feb26/prvr_1.pdf?la=en.

AAG in the totality of the context to date are enough to find this pattern of requests is “intended to harass or annoy” the OAG, *id.* at 22.²⁰ This is especially so given that the requests followed good-faith responses from the OAG. Though a small number of the requests are more neutral in tone, we observe that these requesters engaged a similar pattern in their PIA requests to the BCSAO, which we found both vexatious and in bad faith.

We also find that these PIA requests—and the pattern that they constitute—are in bad faith. As with the requests in PIACB 24-29, we cannot here conclude definitively that these PIA requests were all sent from one person “pretending to be someone else,” *Town of East Lyme*, FOIC PRVR # 1, at 15, although they might have been. However, as explained above, we do find that the requests represent, at the least, a coordinated effort that on its face appears more concerned with repeating an unsubstantiated conspiracy theory about allegedly corrupt government employees than it is with access to public records. In that way, the requests “make a mockery of public access,” *id.*, and, as with the PIA requests in PIACB 24-29, “there is a certain amount of deception present,” PIACB 24-29, at 24-25 (Mar. 29, 2024), in the way the requesters have fashioned their campaign. Here too, we find that deception “indicative of bad faith.” *Id.* at 25. Another indicator of bad faith is the fact that many of the PIA requests are worded in way that would “require the OAG to admit, by virtue of providing records, *and without any foundation for the accusations*,” that its employees engaged in the fraud and misconduct alleged. *See* PIACB 24-85, at 4 (June 28, 2024) (emphasis added).²¹ If the requesters had specific, identifiable records in mind, they should simply have asked for those records, which they did not.

Mindful that this is a pattern of PIA requests that overlaps with and has continued since our decision in PIACB 24-29, we observe that these requests are placing an excessive and, given their nature as described here, unwarranted strain on public records systems. At this point, these requests are jeopardizing the mission of the administrative structure designed to ensure that citizens in this state can obtain public records promptly and without undue cost. This abuse of process has real-life consequences, even to the point of affecting our ability to timely decide complaints.²² While we cannot say for sure whether this

²⁰ See, for example: Lionel Rodriguez (Jan. 9, 2024, at 5:29 p.m.), who suggested that the AAG is “just a basic nobody attorney representing the BCSAO”; SM (Mar. 16, 2024, at 12:49 a.m.), who accused the AAG of “mak[ing] disparaging comments about any rape or domestic violence victim”; Adam Barry (Mar. 23, 2024, at 12:35 a.m.), who accused the AAG of “utilizing falsified exhibits in the course of litigation and PIA matters”; Thuy Nguyen (Apr. 7, 2024, at 11:05 p.m.) who accused the AAG of “manufacturing” “falsified exhibits and information . . . used in the course of PIA litigation”; Rachel Garcia (Apr. 27, 2024, at 11:29 a.m.), who accused the AAG of “distributing, communicating documents related to an active rape case.”

²¹ PIACB 24-85 was a complaint by Eric Rodriguez regarding a PIA request that is also identified in this complaint.

²² In fiscal year 2024, we received forty-three complaints from requesters associated with James Alford and two complaints from custodians concerning requests related to James Alford. Of the

grinding of gears is the objective of these PIA requests and subsequent complaints to our Board, it is certainly a result and a valid consideration here. *See Town of East Lyme*, FOIC PRVR # 1, at 16 (finding that the respondent's requests "had a decidedly detrimental effect" on the agencies, and that they were "disruptive" and "significantly hampered the [agencies'] responsibilities and functions"). This too, adds to our conclusion that the PIA requests the OAG identifies in its complaint have been made in bad faith.

Recognizing that we declined to find that the PIA requests in PIACB 24-29 were frivolous, the OAG argues that we should do so here "to the extent that the requests seek documents that self-evidently do not exist." In PIACB 24-29, we said that a request might be frivolous when it "has no basis in law and lacks in legal merit or foundation." PIACB 24-29, at 22 (Mar. 29, 2024). We decided that the PIA requests identified there did not "rise to the level of 'frivolous' in that way," despite their repetitive nature. We reach a different conclusion here. This record, coupled with our decision in PIACB 24-29 (which, given that this matter involves fifteen of the same requesters, is necessarily part of "the totality of the circumstances" that we must consider) demonstrates a continued pattern of harassment and abuse of process, as discussed above. *See also* § 4-1A-04(b)(3) (directing the Board to consider "the number and scope of the applicant's past requests"). In our view, there is "no basis in law" for sending PIA requests as they have been sent here, when they function primarily to further unfounded and unsupported accusations of unethical and criminal misconduct and often seek records that patently do not exist.

Conclusion

We find that the OAG has shown by a preponderance of the evidence that the requests identified in its complaint may be attributed to "an applicant." The majority of the requests were sent from email accounts that were also identified in PIACB 24-29, where we reached the same conclusion. Further, the content of the PIA requests and other communications sent by the requesters convinces us that, even if not all sent by the same person, they are part of a coordinated campaign. For the reasons explained above, we also find, "based on the totality of the circumstances," § 4-1A-04(b)(3), that these PIA requests are frivolous, vexatious, and in bad faith. We therefore order that the OAG need not respond to any of the PIA requests identified in its complaint, or to any subsequent or future PIA requests for records related to James Alford, Louis Leibowitz, and the matters heard between them in the District Court of Maryland for Baltimore City from early 2022 through the end of 2023. The OAG also need not respond to subsequent or future PIA requests for communications that relate in some way to these James Alford matters.²³

eighteen complaints we have received so far in fiscal year 2025, ten are from requesters associated with James Alford.

²³ Nothing in this decision is meant to absolve the OAG from responding to PIA requests for these records from requesters who are not implicated in the campaign described above, e.g., from members of recognizable, credible media outlets who may be interested in these matters.

Public Information Act Compliance Board

Sareesh Rawat, Chair
Samuel G. Encarnacion
Debra Lynn Gardner
Quinton M. Herbert
Nivek M. Johnson
